

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

AMY WALKER,)
)
Plaintiff,)
)
vs.) Case No. CIV-16-703-D
)
ANDREW M. SAUL,¹)
Commissioner of Social Security,)
)
Defendant.)

ORDER

Before the Court is the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. Nos. 22], filed by Plaintiff's attorney. Miles L. Mitzner seeks approval of a fee award in the amount of \$34,007.38, to be paid out of Plaintiff's award of past-due benefits in accordance with a 25-percent contingency fee agreement between Plaintiff and his law firm. Defendant has made a timely response to the Motion, arguing that the amount of Mr. Mitzner's fee request is unreasonable and represents a windfall. Defendant reminds the Court of its obligation to determine a reasonable attorney fee, and urges the Court to make an unspecified reduction of the contingency fee amount.

Upon consideration of the Motion in light of *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), and *Wrenn v. Astrue*, 525 F.3d 931 (10th Cir. 2008), the Court finds that Plaintiff's attorney may recover a reasonable fee for the representation of Plaintiff in this case up to the statutory limit of 25% of past-due benefits, provided the attorney refunds the amount

¹ The newly appointed Commissioner is automatically substituted as the proper defendant pursuant to Fed. R. Civ. P. 25(d).

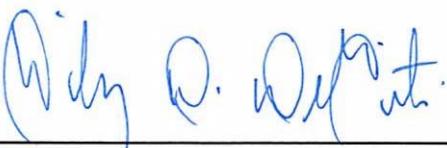
of fees previously awarded under the Equal Access to Justice Act (EAJA). *See Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986); *see also* Order Granting Stip. Mot. for Award Att'y Fees [Doc. No. 19]. The supporting documents with the Motion, as well as the case record, show a total of 35.05 hours of legal services performed for Plaintiff's representation in this case (26.5 attorney hours and 8.55 paralegal hours), which resulted in a favorable judicial decision. *See J. & Order of Remand* [Doc. No. 17]. After remand, Plaintiff was determined to be entitled to benefits and was awarded a past-due amount of \$136,029.50. The Motion has been timely filed within the deadline previously set by the Court. *See Order of June 4, 2019* [Doc. No. 21].

Under the circumstances presented, the Court finds that the requested amount of \$34,007.38 represents an unreasonable fee award for the work done by Plaintiff's attorney in this case, taking into account the contingent-fee agreement and other pertinent factors. *See Gisbrecht*, 535 U.S. at 808. The amount does not exceed 25% of Plaintiff's award of benefits obtained by reason of the judgment entered May 19, 2017, but it represents a windfall for Plaintiff's attorney and far exceeds the amount needed to account for the contingency nature of the representation and the delay in receiving payment. The Court finds that \$15,601.25 represents a reasonable fee award under § 406(b), provided Mr. Mitzner refunds to Plaintiff the amount previously awarded as an EAJA fee award.²

² This amount represents a reasonable hourly rate for the attorney (\$200) multiplied by the number of attorney hours (26.5) and a multiplier of 2.5 for an attorney total of \$13,250, and a reasonable hourly rate for the paralegal (\$110) multiplied by the number of paralegal hours (8.55) and a multiplier of 2.5 for a paralegal total of \$2,351.25.

IT IS THEREFORE ORDERED that the Motion for Attorney Fees Under 42 U.S.C. § 406(b) [Doc. No. 22] is GRANTED in part and DENIED in part, as set forth herein. The Court approves an award of attorney fees under 42 U.S.C. § 406(b) to be paid by Defendant to attorney Miles L. Mitzner in the amount of \$15,601.25. Upon payment of this amount, Plaintiff's attorney shall promptly refund to Plaintiff Amy Walker the amount of EAJA fees previously awarded of \$5,000.00.

IT IS SO ORDERED this 24th day of July, 2019.



TIMOTHY D. DeGIUSTI
Chief United States District Judge